IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 262 of 2000(B)

OA.49/1998 of FOREST TRIBUNAL, KOZHIKODE
.....

APPELLANT:

KOOTHUPARAMBAN SULAIMAN HAJI,S/O.MAMMU,
P.O.T.K.COLONY, AMARAMBALAM,MALAPPURAM DIST.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS:

1.STATE OF KERALA, REP. BY ITS CHIEF SECRETARY,
THIRUVANANTHAPURAM.

2.THE CUSTODIAN OF VESTED FORESTS,OLAVACODE,
CIRCLE, OLAVAKODE, PALAKKAD - 2.

BY GOVERNMENT PLEADER SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.262 OF 2000 (B)

Dated this the 11th day of October, 2007

J U D G M E N T

KOSHY,J.

The appellant approached the Forest Tribunal contending that three acres of property cultivated with rubber, coconut, arecanut plantations and other trees were taken possession by the Forest Department holding that it is vested under Section 3(1) of the Private Forest (Vesting and Assignment) Act. It is contended that the above land is not a private forest as even if it is a private forest, it is exempted under Section 3(2) of the Act. After going through the Commission report, tribunal found that there is no evidence that it was a cultivated area before the appointed day. Even if there is rubber and coconut cultivation as contended by the appellant, compulsory registration must be necessary. There was no registration. Therefore on the appointed day there was no evidence to show that it is a cultivated area. It is covered under the M.P.P.F Act.

Therefore the land is vested under Section 3(1) of the Act. Exemption under Section 3(2) also cannot be claimed because there is no evidence to show that property in question was in possession of the petitioner on the relevant date and even the documents produced with regard to the title etc. there are difference in survey numbers. There is no evidence to show that appellant had valid title. In any event, appellant was not the owner at the time when the Act came in force. In any event, it is not a cultivated area and there is no evidence suggesting that appellant has intention to cultivate the area at the time when Act came in force. Therefore tribunal was correct in rejecting the application and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.262 OF 2000 ()

J U D G M E N T

11th October, 2007